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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1037. 662

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFFS IN ERROR,

vs.

THE NORTHERN RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 28, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Complaint.*

In the Superior Court of the State of Calfornia in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE NORTHERN RAILWAY COMPANY (a Corporation), Defendant.

Comes now the said plaintiff and complains of the said defendant, The Northern Railway Company, and for cause of action states:

1. That the said defendant is, and for more than a year last past has been, a corporation organized and existing under the laws of said State, and during all that time has been and still is the owner of and operating a railroad in the counties of Alameda, Colusa, Contra Costa, Solano, Tehama, and Yolo, in said State.

2 2. Plaintiff avers that on the 18th day of August, in the year 1883, the State board of equalization assessed the franchise, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of $2,000,000.00; that the board apportioned the said assessment as follows: To the county of Alameda, the sum of $92,318.00; to the county of Colusa, the sum of $846,496.00; to the county of Contra Costa, the sum of $320,081.00; to the county of Solano, the sum of $228,437.00; to the county of Tehama, the sum of $233,009.00, and to the county of Yolo the sum of $279,649.00.

That the defendant is indebted to the plaintiff for State and county taxes for the year eighteen hundred and eighty-three in the following sums: For State taxes, in the sum of nine thousand nine hundred and forty dollars; for county taxes of the county of Alameda, in the sum of $567.12; for county taxes of the county of Colusa, in the sum of $8,067.10; for county taxes of the county of Contra Costa, in the sum of $3,370.45; for county taxes of the county

3 of Solano, in the sum of $2,451.12; for county taxes of the county of Tehama, in the sum of $2,453.69, and for county taxes of the county of Yolo, in the sum of $2,105.75, together with five per cent. added to each of said several sums for non-payment of taxes, and also for interest on each of said several sums at the rate of two per cent. per month from the 31st day of December, 1883, and for costs and counsel fees as provided for by law.

Wherefore plaintiff demands judgment for said several sums, and prays that an attachment may issue in form as prescribed in section 540 of the Code of Civil Procedure.

JAMES A. WAYMIRE,
W. T. BAGGETT,
Attorneys for Plaintiff and for the Controller.

Endorsed: Filed Feb. 23, 1884 William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

4 *Authorization of Controller, &c.*

In the Superior Court of the State of California in and for the City and County of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,
vs.
THE NORTHERN RAILWAY COMPANY, Def't.

I hereby authorize James A. Waymire and Wm. T. Baggett, Esq., to begin an action in the proper court against the above-named defendant in the name of the People of the State of California, in accordance with law, to collect the delinquent taxes for 1883 upon the property of said defendant assessed by the State board of equalization, together with all costs, penalties, interest, and attorney's fees allowed by law. I also authorize the said attorneys
5 to sue out attachments and take all other steps necessary to the collection of said moneys.

Sacramento, Feb. 21, 1884.

JOHN P. DUNN,
Controller.

Endorsed: Filed Feb. 23, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

6 *Affidavit of J. E. Foulds.*

In the Superior Court, City and County of San Francisco, State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Pl'ff,
vs.
THE NORTHERN RAILWAY COMPANY, Def't.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

J. E. Foulds, being first duly sworn, on oath says that he is one of the permanently retained attorneys of the said defendant; that there has been no extension of time to answer the complaint in said action granted either by order or stipulation; that the time to answer expires on the 7th day of March, 1884, and that said defendant cannot within said time obtain the facts necessary to its defense;
7 that in order to present said defense it will be necessary to make examination of records in Sacramento and other counties in the State, and such examination cannot be concluded before the 25th day of March, 1884, as affiant is informed and believes. Wherefore said defendant prays for an order of said court extending its time to answer, demur, or plead in said action to the 25th day of March, 1884.

J. E. FOULDS.

Subscribed and sworn to before me this 3d day of March, 1884.
J. D. RUGGLES,
Deputy County Clerk.

Endorsed: Filed March 4th, 1884. William T. Sesnon, clerk, by J. Steppacher, deputy clerk.

8 *Order Extending Time to Plead.*

In the Superior Court of the City and County of San Francisco, State of California. (Department No. 7.)

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE NORTHERN RAILWAY COMPANY, Defendant.

For good cause shown the time for the parties to answer, demur, or plead in the above-entitled action is hereby extended up to and including the 25th day of March, A. D. 1884.

San Francisco, Cal., March 4, A. D. 1884.

T. H. REARDON, *Judge.*

9 Endorsed: Due service of a copy of the within order is hereby admitted this 4th day of March, A. D. 1884. James A. Waymire, W. T. Baggett, att'ys for plaintiff. Filed March 4, 1884. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

10 *Answer.*

In the Superior Court of the City and County of San Francisco, State of California.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
NORTHERN RAILWAY COMPANY, Defendant. } No. 11847.

Now comes the defendant and, answering the complaint of plaintiff filed herein—

I.

Denies each and every allegation in said complaint had, made, or contained; denies that it now is or ever has been a corporation organized or existing under the laws of the State of California, or that it now is or ever has been the owner or operator of a railroad in the counties of Alameda, Colusa, Contra Costa,
11 Solano, Tehama, or Yolo, in said State, except as hereinafter specifically set out; denies that on the 18th day of August, 1883, or at any other time the State board of equalization assessed the franchise, roadway, road-bed, rails, or rolling-stock of defendant at the sum of $2,000,000.00, or any other sum of money; denies that the said board ever apportioned said pretended or any assessment to the county of Alameda in the sum of $92,318.00, or any other sum; to the county of Colusa in the sum of $846,496.00, or any other sum; to the county of Contra Costa, in the sum of $320,081.00, or any other sum; to the county of Solano in the sum of $228,437.00, or any other sum; to the county of

Tehama in the sum of $233,019.00, or any other sum; or to the county of Yolo in the sum of $279,649.00, or in any other sum; denies that it is indebted to plaintiff for State or county or any taxes for the year 1883 or for any other year in any sum or sums whatever; denies that it is indebted to plaintiff for State or any taxes in the sum of $9,940.00, or any other sum; or for county taxes for the county of Alameda in the sum
12 of $567.12, or in any other sum; or for county taxes for the county of Colusa in the sum of $8,067.10, or any other sum; or for county taxes for the county of Contra Costa in the sum of $3,370.45, or any other sum; or for county taxes for the county of Solano in the sum of $2,451.12, or any other sum; or for county taxes for the county of Tehama in the sum of $2,453.69, or any other sum; or for county taxes for the county of Yolo in the sum of $2,105.75, or any other sum, as alleged in said complaint or at all; denies that it is indebted to plaintiff in the sum of five or any per cent. added to each or any of said several sums for non-payment of said alleged or any taxes; denies that it is indebted to plaintiff for interest on each or any of said several sums at the rate of two or any per cent. per month from the 31st day of December, 1883, or from any other time or day, or for costs, or counsel fees, as provided by law, or at all. Defendant refers to and makes part of this subdivision the matter stated in subdivisions 2 to 20 of this answer.

And, for further and separate answer, defendant avers as
13 follows:

II.

Defendant a corporation—Its place of business—Line of road—Stockholders.

The defendant is, and for more than five years last past has been, a corporation existing under the laws of the State of California, and as such it constructed a line of railroad known as the Northern railway, extending from Oakland at the point of intersection of the water-line of the Bay of San Francisco with mole, running thence northerly on westerly line of Oakland, skirting the shore, to a point on Cerrito creek, being on [the] south line of Contra Costa county; thence continuing in the same course to a point on the water-line of the said bay; thence easterly to Port Costa; thence in the same course to its intersection with S. P. R. R. at Martinez; also from Port Costa, on ferry steamer Solano, across Carquinez Straits, to Benicia; thence along the water front of Benicia to Arsenal
14 Point; thence northerly through the swamp to Suisin; also beginning at Woodland, running thence northerly through Dunnigan's and Williams' to depot at Willows; from thence, in a general northerly direction, to depot at the town of Tehama.

The principal place of business of defendant now is, and for many years last past has been, in the city of San Francisco, State of California. Some of its stockholders and members now are, and ever have been, citizens of the United States and residents of said State of California, and some of its stockholders and members

now are, and ever have been, citizens of the United States and *bona fide* residents of States other than the State of California.

III.

Length of road in the several counties.

The total length of said railroad in said State of California is 148.40 miles, and the length thereof in the respective counties through which it passes is as follows: In the county of Alameda, 6.85 miles; in the county of Contra Costa, 23.75 miles; in the county of Solano, 16.95 miles; in the county of Yolo, 20.75 miles; in the county of Colusa 62.81 miles; in the county of Tehama, 17.29 miles.

IV.

Indebtedness of defendant secured by mortgage.

On the 1st day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, in large sums of money advanced to construct and equip the railroad hereinbefore described. To secure the payment of such indebtedness the defendant, on the said first day of April, 1875, executed and delivered a mortgage upon its said railroad, its franchises, and all rolling-stock and appurtenances. Said indebtedness exceeded, and still exceeds, three thousand dollars per mile of said road, and no part thereof has ever been paid except the accruing interest, and the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been and still is secured by said mortgage.

V.

Assessment by State board of equalization.

On the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article XIII of the constitution of the State of California, did make a pretended assessment, for the purposes of taxation, for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant. Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock or any properties of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based, and no other assessment than the aforesaid was ever made of said property, or any part thereof, for said fiscal year. Said assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9th, 1883, except depots, station

shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed, as provided in said section, by local assessors.

VI.

State board pretended to assess the whole of said property to defendant.

The State board of equalization, in making the said pre-
18 tended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises, as prescribed in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

VII.

State board did not treat said mortgage as an interest in the property.

In making said pretended assessment the said State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgages thereon.

VIII.

Authority exercised by State board violates provisions of Fourteenth Amendment.

19 Under the constitution of the State of California the board of supervisors of the several counties of the State constitute boards of equalization for their respective counties, whose duty it is to equalize the valuation of the taxable property in the county, except the franchise, roadway, road-bed, rails, and rolling-stock of railroads operated in more than one county of the State, and to such boards the owners of all property, except as above stated, have the right and privilege to apply for the correction of their assessments, and have the right and privilege of a hearing before the said local boards of equalization. By the provisions of the constitution of California and the laws in pursuance thereof this right and privilege, or any right or privilege, to be heard in relation to assessments is denied to defendant in respect to the property in question; all of which de-
20 fendant avers is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deny to any person within its jurisdiction the equal protection of the laws.

IX.

Further violation of the Fourteenth Amendment.

The power conferred upon the State board of equalization by sec-

tion ten of article XIII of the constitution of California violates the provision of the Fourteenth Amendment to the Constitution of the United States which declares that no State shall deprive any person of life, liberty, or property without due process of law, for that said section, as to such power, is self-executing and complete, and does not provide for personal or other notice to be given to the parties to be affected by the exercise of such power, and does not provide for a full or any opportunity of time, place, or tribunal for such parties to be heard in defense of their rights; and, hence, under and
21 by said provision of the constitution of the State of California the liability of owners of such property to taxation and the amount thereof may be fixed without notice to them or an opportunity to be heard.

X.

Further discrimination.

The provisions of section four of the constitution of the State of California, providing for the assessment of the property of railroad and other quasi-public corporations, is in contravention of the provisions of said Fourteenth Amendment of the Constitution of the United States in that it discriminates against such corporations in this: that whereas, under said section four of said article XIII of the constitution of the State of California, if the property of natural persons or corporations not quasi-public has a mortgage, lien, or incumbrance thereon they are not liable to assessment or taxation upon such property, but only upon the value of their interest in such
22 property over and above the value of such mortgage, lien, or incumbrance, whereas in the case of the property of railroad and other quasi-public corporations no such allowance or deduction is made, had, or allowed with respect to any mortgage, lien, or incumbrance there may be upon such property, and also in this: that while the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-beds, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations or by private corporations or by natural persons, yet section four of article XIII of said constitution permits or allows indebtedness secured by mortgage, trust deed, or otherwise to be deducted from the value of such property only when it is owned by natural persons or
23 corporations not quasi-public, and denies such deduction when the property is owned by railroad or other quasi-public corporations.

XI.

Further discrimination.

Section 10 of article XIII of said constitution of California provides that all property except the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county in the State shall be assessed in the county, city, city and county, town,

township, or district in which it is situated in the manner prescribed by law.

The laws of said State prescribe that all property, except that above mentioned, shall be assessed in the county in which it is situated by an assessor elected by the people of such county.

The assessors of the several counties in the State of California have, as the defendant is informed and believes, and so avers, in each year since the adoption of said constitution, assessed all moneys, credits, bonds and stocks, dues, franchises, and all other
24 matters and things, real, personal, and mixed, capable of private ownership, situated in their said counties, and all dues and credits held, owned, or in the possession of persons resident in said county, to such persons.

Said assessors for each of said years have assessed to the owners and holders thereof, in their respestive counties, the indebtedness of the defendant secured by the mortgage herein mentioned, but never have, nor does the law permit them so to do, made any deduction from the assessment of any of the property of this defendant on account of the assessments made as aforesaid to the holders of such indebtedness.

XII.

Further discrimination.

All owners of railroad property operated in more than one county, by virtue of said section ten of article XIII, are denied any
25 protection from the laws of the State of California, which—

(*a*) Require that property shall be taxed in proportion to its value.

(*b*) Require such proportions to be ascertained by a general law.

(*c*) Require that before liability be fixed an opportunity to be heard must be given.

(*d*) Give an appeal from the assessor to boards of equalization.

(*e*) Require the assessment to be made in the county, and prohibit its being made in localities distant from the *situs* of the property.

(*f*) Which prescribe mode and manner of the assessment.

And defendant avers that at and before and ever since the adoption of the constitution of California now in force there were and are existing under the laws of said State corporations of various kinds formed for the purpose of and actually operating and doing business and holding and using and operating property in more than one county in said State, and that at all of said
26 times there were and there now are divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of said State, and also by natural persons, which are only operated in one county; that by the provisions of section ten of article XIII of said State constitution persons operating railroads in more than one county in the State have been singled out from all other persons operating property in more than one county and denied the right, common to all other persons, to appeal for relief from overvaluations

of their property by assessors to the local board of equalization, and denied the rights and privileges accorded by the laws to all other persons in that respect. Corporations in said State of California now are and ever have been formed under general laws relating
27 thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations. Under the provisions of the laws relating to the formation of private corporations such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together, and there now exists in California, and ever have existed, corporations formed under said laws for fire, marine, mutual life, health, and accident insurance; building, constructing, and operating railroads, wagon-roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals, for the purposes of acquiring lands in large tracts and distributing them as homesteads among the corporators, for savings and loans, for mining, for the sale and distribution of water in cities and towns; for manu-
28 facturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

In said State of California there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations. There now is, and for more than three years last has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is and ever has been operated in more than one county in this State and is of the same gauge as the road of this defendant and has ever been operated for like uses and purposes.

29 Said road with all its equipments now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and resident of the State of California.

There now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and in the county of Santa Cruz eastward through said county and into the county of Monterey to the town of Pajaro, a distance of about twenty-one miles.

Said road now is, and for a long time past has been, owned, operated and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the ownership and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not
30 and never has been a railroad or quasi-public corporation.

There now are, and for more than five years last past have

been, divers other railroads owned and operated in said State by corporations other than railroad corporations and by individuals and partnerships, and that all of said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and as said defendant, upon information and belief, avers have been allowed such deductions.

XIII.

System adopted by said board violates rules of equality.

The State board of equalization, in making said pretended assessment of the said roadway of defendant, did willfully and de-
31 signedly include in the valuation of said roadway the value of the fences erected upon the land of coterminous proprietors, and did willfully and designedly value the said roadway at a greater value than the value of other property similarly situated, and greater than its actual value, upon the ground that such increased valuation should be made because the title of defendant thereto was acquired by condemnation.

The value of such fences, which were not the property of defendant nor the property of the owners of said roadway, and the increased value affixed to the roadway by the system adopted by the board are blended in said pretended assessment, and there is no mode or means by which such illegal valuation can be separated from those which may be legal. Defendant, upon its information and belief, avers that the said State board of equalization adopted a system of valuation in respect to all the property mentioned and
32 referred to in section 10 of article XIII of the constitution, which defines the power of said board, which system was by said board intended to and which did operate unequally, and which was intended to and did violate the rule prescribed by said section that all of such property should be assessed at its actual value. The system so adopted was applied by the said board in making said pretended assessment of said property and in making the assessment of all property in the State over which the pretended authority of said board extended.

Said system was to include within the value of the roadway the value of the fences owned and possessed by coterminous proprietors, and to value said roadway at double its actual value, because the right thereto was acquired by condemnation. Said system relative to the rolling-stock of railroads was to value the same at sixty
33 per cent. above its actual cost when new, and to value such rolling-stock at double its actual value. Said system relative to the franchise was to value it at $2,000 per mile, when the actual value, as the board well knew, of said franchise as an entirety did not exceed twenty-five dollars. Said system as to the valuation of other property to be assessed by the said board was to value it at double its actual value. Said system was by said board adopted and was by it applied in making all assessments made by it, with

the intent and purpose wrongfully and unlawfully to cause the owners of property assessed by it to pay double the rate of State and county taxes paid by the owners of property assessed by local assessors; and defendant avers, upon its information and belief, that the said board applied the said system in making the pretended asessment against the property upon which the taxes mentioned in
34 the complaint are based; and defendant, upon its information and belief, avers that the said State board of equalization in making said pretended assessment did not value any of said property at its actual value, but did, intentionally and for the purpose of making defendant pay an unequal proportion of State and county taxes, assess the said property at double its actual value; and defendant avers that the general rule in this State has been to assess property at not over two-thirds its cash or actual value, and that this rule was adopted and acted upon by all local assessors in the State and by the said State board, except in the exercise of the power conferred by section 10, art. XIII, of the State constitution for said fiscal year, and that all property, save that assessed by the said State board under said section, has been valued and assessed at one-third less than its actual value, and that the taxes have been collected on valuations so made.

35 XIII (*a*).

Value of ferry-boats blended with other values.

The route of defendant's road crosses the Straits of Carquinez, being part of the waters of the Bay of San Francisco, from Port Costa to Benicia, a distance of about one mile, over which defendant transports its passengers and freight-cars upon the ferry steamer Solano, of the burden of 3,541.31 tons. Said steamer is of great value, and is of the class which by law is required to be registered and now is, and for more than four years last past has been, registered and enrolled in the city and county of San Francisco, State of California, in the name of The Pacific Improvement Company, a private corporation under the laws of the State of California, and defendant does not now nor has it ever owned any interest in said steamer save a lease thereof. Said steamer now is, and has been for four years last past, used for
36 the purposes above stated.

The State board of equalization, in making said pretended assessment of the said roadway, road-bed, rails, and rolling-stock of defendant, did willfully and designedly include in the valuation thereof the value of said ferry-boat, and the value of said boat is blended in said pretended assessment with the value of said roadway, road-bed, rails, and rolling-stock, and there is no means by which such value can be separated from the valuation placed by said board upon said roadway, road-bed, rails, and rolling-stock, or either of them.

XIV.

Valuation excessive.

Neither the franchise, roadway, road-bed, rails, or rolling-stock were assessed by the State board of equalization in said pretended assessment at their actual value, or in proportion to their value, but were willfully and intentionally assessed greatly in excess and out of proportion to such value, and greatly in excess and out
37 of proportion to the rate at which all other property in said State is valued for the purposes of taxation, to wit, one hundred per cent. in excess thereof.

XV.

Sole authority upon which tax is based.

Said pretended assessment is the only assessment of said property, and the pretended tax, for non-payment of which this action is brought, is founded upon said pretended assessment and upon no other assessment.

XVI.

County tax not the same in all townships and districts.

The defendant, upon its information and belief, avers that the tax levied by the board of supervisors for said fiscal year was not fixed at the same rate in every township and district in said county. And defendant, upon its information and belief, avers that said tax was levied by said board without authority of law, and that the same
38 was illegally placed upon said assessment roll or book and delinquent list because, as defendant avers, the State board of equalization has not apportioned said franchises, etc., to said townships and districts, as required by section 10, article XIII, of the constitution of California. Upon the assessment-roll and delinquent list of said county the said several taxes, State, county, township, and district, are blended and cannot be separated.

XVII.

State tax void.

The defendant, upon its information and belief, avers that the State board of equalization never at any time did for the said fiscal year fix or determine any rate of taxation for State purposes, and that the sum and the whole thereof claimed in the complaint for State taxes for said fiscal year is illegal and void.

XVIII.

Plaintiff's causes of action based upon assessment by State board of equalization.

39 On the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and by virtue of the powers conferred upon it by section 10 of article

XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of the railroad hereinbefore described against this defendant; that said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad, but all of said properties were blended together in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said pretended assessment is the assessment upon which the several taxes mentioned in plaintiff's complaint are claimed to be due, and
40 that no other assessment than such pretended assessment was ever made against or upon said property or any part thereof.

XIX.

Tender.

On the ninth day of November, 1883, the defendant, while then and now denying all liability upon said pretended assessment, and claiming that all of the proceedings had in relation thereto were in violation of law and the rights of this defendant, tendered and offered the said plaintiff the sum of $17,373.13, in United States gold coin, in part payment of the tax claimed, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; and defendant now brings said sum into court and offers the same to plaintiff, and, if refused by plaintiff, subjects the said sum to such orders or judgments as the court may make in the premises, and defendant avers
41 that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $5,964.00, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of Alameda the sum of $340.27.
For the county of Colusa the sum of $4,840.26.
For the county of Contra Costa the sum of $2,022.27.
For the county of Solano the sum of $1,470.67.
For the county of Tehama the sum of $1,472.21.
For the county of Yolo the sum of $1,263.45.
And ever since has and now keeps said tender good.

XX.

No rules or regulations.

Said State board of equalization has never at any time made or adopted any rule or regulation relative to the assessment or valuation of railway property of any kind, nor has it ever made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section 10 of article XIII of the constitution of California.

Wherefore defendant prays it be hence dismissed with
42 costs.

J. E. FOULDS,
Attorney for Defendant.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

Verification.

STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

W. V. Huntington, being first duly sworn, on oath says that he is an officer, to wit, the president of the corporation defendant herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on his information or belief, and as to those he believes it to be true.

W. V. HUNTINGTON.

Subscribed and sworn to before me this 19th day of March, A. D. 1884.

[NOTARIAL SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

43 Endorsed: Due service of the within answer admitted this 22d day of March, 1884. James A. Waymire, Wm. T. Baggett, attorneys for plaintiff. Filed March 22d, 1884, 2¼ p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

44 *Petition for Removal of Cause to U. S. Circuit Court.*

In the Superior Court, City and County of San Francisco, State of California. Dep't 7.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THE NORTHERN RAILRWAY COMPANY, Defendant.

To the honorable the superior court in and for the city and county of San Francisco, State of California:

Your petitioner, The California Pacific Railroad Company respectfully shows:

That your petitioner is the sole defendant in the above-entitled action now pending in this honorable court.

That said action was brought on the 23d day of February, 1884, the complaint therein having been duly filed on said date.

45 That the defendant has on this day, and before the filing of this petition, appeared in said action and filed an answer to the complaint of plaintiff.

That no term of this court has been held since this action, and

this petition is filed before the term at which the cause could be first tried.

That no trial of said action has been had, and this petition is filed before the trial thereof.

That said action is a suit of a civil nature at law and arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of costs, the sum and value of five hundred dollars.

That said action is brought by the plaintiff to recover from the defendant on account of taxes claimed by the plaintiff to be due and payable from the defendant for State and county purposes, as will more fully appear by a reference to the plaintiff's complaint on file herein.

46 That the assessment described in the complaint and answer, and which the plaintiff in this action claims to be due and payable, is an assessment which the State board of equalization of the State of California pretended to make under and by virtue of the authority conferred upon the board by section 10 of article XIII of the State constitution.

That the defendant claims in this action that said provisions of the constitution of the State of California and the authority thereby conferred upon said State board of equalization violate the provisions of the Fourteenth Amendment to the Constitution of the United States, in this, that its effect is to deprive the defendant of its property without due process of law, and that under it the defendant is denied any protection from the general laws of the State of California, which—

First. Require that property shall be taxed in proportion to its value.

47 Second. Require such proportions to be ascertained by a general law.

Third. Require, before the liability is fixed, that the right to be heard must be given.

Fourth. Which give an appeal from the assessor to another tribunal.

Fifth. Require the assessment to be made in the county and prevent its being made in localities distant from the *situs* of the property.

Sixth. Prescribe the mode and manner of the assessment; and,

Seventh. Which allow deductions from indebtedness secured by mortgage.

Eighth. Which require property to be assessed at its actual value.

That prior to the 1st day of January, 1884, the defendant was and now is indebted to divers persons, citizens of the United States, and many of them then and now citizens and *bona fide* residents of the State of California, and others of them then and now citizens and *bona fide* residents of other States of the Union, in large

48 sums, for moneys advanced to construct and equip its railroad described in the answer herein; that to secure the payment of such indebtedness the defendant, long prior to the said day, executed and delivered a mortgage upon its railroad and all rolling-

stock and appurtenances; that said indebtedness exceeded and still exceeds three thousand dollars per mile of said road; that no part thereof has ever been paid, except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company defendant, and has been and still is secured by said mortgage; that the said pretended assessment made as aforesaid by said State board of equalization included the whole value of said property without any deduction therefrom; that under the constitution of the State of Cali-
49 fornia, when property other than property such as is described in the complaint is assessed and valued for the purposes of taxation, it is the duty of the assessor making such valuation to deduct from the value of such property all indebtedness secured by mortgage or lien upon the property; that the supreme court of the State of California, the highest tribunal in said State, has decided that defendant (and others similarly situated) is not entitled to the protection of the Fourteenth Amendment of the Constitution of the United States, is not a means or instrument of the Federal Government, and that defendant and others similarly situated are not entitled to the reduction hereinbefore referred to; that said decision of the supreme court of the State of California is in full force and is binding upon the inferior courts of the State, and especially upon this court; that the facts stated in the answer herein are true, which an-
50 swer defendant refers to and makes part of this petition; that the plaintiff in said action will rely upon the decision of the supreme court of the State of California, and that the construction of said several acts of Congress and of the Fourteenth Amendment to the Constitution of the United States is in this action disputed, and must necessarily be adjudged and determined herein, and that if said adjudication and determination be in favor of defendant and against that heretofore made by the supreme court of the State of California such adjudication and determination will be conclusive in favor of defendant upon the merits of this action; that this is a suit arising under the Constitution and laws of the United States; that your petitioner has made and filed with this petition a bond in the penal sum of five thousand dollars, with good and sufficient surety, conditioned that your petitioner shall enter in the circuit court of the United States to be held in the district of California, in the ninth
51 circuit, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and also shall appear in said circuit court and enter special bail in said suit if special bail was originally requisite therein, and shall do all such other and further appropriate acts as by the act of Congress approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," are requisite to be done upon removal of a suit in a circuit court of the United States from a State court; and your petitioner is ready and willing to give such other

and further bonds and to do all such other acts as may be lawfully required.

52 Your petitioner therefore prays that this honorable court will accept this petition and said bond and proceed no further in said suit, and that said suit may be removed into the circuit court of the United States in and for the district of California, in the ninth circuit, as required by statute of the United States in such cases made and provided.

And your petitioner will ever pray, etc.

J. E. FOULDS,
Attorney for Petitioner.

S. W. SANDERSON AND
CREED HAYMOND,
Of Counsel.

Endorsed: Filed March 22d, 1884, 2½ o'c. p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy.

53 *Bond on Removal.*

In the Superior Court, City and County of San Francisco, State of California. Dep't 7.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY (a Corporation), Defendant. } No. 11847.

Know all men by these presents that we, The Northern Railway Company, as principal, and Chas. F. Crocker and A. N. Towne, as sureties, are held and firmly bound unto The People of the State of California in the sum of five thousand dollars, to be paid to the said plaintiff; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

54 Sealed with our seals and dated this fifth (5th) day of March, 1884.

Whereas the above-entitled action was brought, on or about the 23d day of February, 1884, in the superior court in the county of San Francisco, State of California, and the same is now pending in said superior court, by said The People of the State of California against said Northern Railway Company, and is removable into the circuit court of the United States in and for the district of California, in the ninth circuit, under and by that certain act of Congress of the United States, approved March 3, 1875, entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes;"

And whereas said The Northern Railway Company has made, and is about to file herewith, its petition in said suit in said superior court in and for the county of San Francisco, State of Califor-

55 nia, for the removal of said suit into said circuit court of the United States, to be held in the said district of California, in the ninth circuit:

Now, the condition of this obligation is such that if said The Northern Railroad Company shall enter in such circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and also shall there appear and enter special bail in such suit if special bail was originally requisite therein, and shall do all such other appropriate acts as by the said act of Congress are required to be done upon the removal of a suit from a State court into the circuit court of the United States, then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.] THE NORTHERN RAILWAY COMPANY,
By W. V. HUNTINGTON, *President.*

56 CHAS. F. CROCKER. [SEAL.]
A. N. TOWNE. [SEAL.]

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Chas. F. Crocker and A. N. Towne, the sureties in the foregoing obligation, being each sworn, each for himself says that he is a resident of the State of California and a freeholder therein and is worth the sum of five thousand dollars over and above all his just debts and liabilities, exclusive of property exempt by law from execution.

CHAS. F. CROCKER.
A. N. TOWNE.

Subscribed and sworn to before me this fifth (5th) day of March, 1884.

[NOTARIAL SEAL.] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, State of California.

I hereby approve of the above sureties and accept and approve the foregoing bond.

57 Dated ——, 1884.

——— ———,
Judge Superior Court, City and County of San Francisco.

Endorsed: Filed March 22d, 1884, 2½ o'clock p. m. William T. Sesnon, clerk, by J. D. Ruggles, deputy clerk.

Clerk's Certificate.

I, William T. Sesnon, county clerk of the county of San Francisco, State of California, and *ex-officio* clerk of the superior court of said county, do hereby certify the foregoing to be a full, true, and correct copy of the whole of the record in the within

action of The People of the State of California *vs.* The Northern Railway Company, now on file in my office and numbered 11847.

In witness whereof I have hereunto set my hand and af-
58 fixed the seal of the said superior court this 22d day of March, 1884.

[SEAL.] WILLIAM T. SESNON,
County Clerk and ex-officio Clerk of Superior Court,
By J. D. RUGGLES,
Deputy Clerk.

Endorsed: Certified copy of record. In the circuit court of the United States for the district of California. Filed March 24, 1884. L. S. B. Sawyer, clerk.

59 *Stipulation Waiving Jury and Submission of Cause.*

In the Circuit Court of the Ninth Judicial Circuit in and for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, Defendant. } No. 3265.

It is hereby stipulated by and between the plaintiff and defendant to the above-entitled action that trial by jury is waived; and it is further stipulated that the above-entitled action shall be, and is hereby, submitted to the court for its findings and determination—

First. Upon the assessment-roll for the year 1883, on file in the office of the controller of the State of California, and upon the assessment in said roll contained and referred to in the complaint herein, which roll is hereby given in evidence.

60 Second. Upon the testimony heretofore given by each party in the case of "The People of the State of California *vs.* The Northern Railway Company, No. 2805," tried and determined by this court in the year 1883, and now pending on appeal in the Supreme Court of the United States. And upon the matters contained in the stipulation made this day and filed in this court in the case of "The People of the State of California *vs.* The Central Pacific Railroad Company, No. 3263."

Third. And upon the admission of the plaintiff that the tender pleaded in the nineteenth subdivision of defendant's answer herein has been kept good, and that, in pursuance of an order of this court heretofore made in this action, the defendant has paid to plaintiff the sum of $17,373.13 in United States gold coin, without prejudice, and for the uses and purposes mentioned in said subdivision of said answer relating to said tender.

61 It is hereby stipulated that the court in making its findings in this case may, in considering the testimony given in the cases referred to in this stipulation, and in considering the matters mentioned in the stipulation hereinbefore referred to in relation to time and place and all other things, adapt the same to the issues in this case, and consider all such matters as if such changes had been made before submission. And it is further stipulated that upon the

issue whether, in the assessment in this case mentioned, the distance across the Straits of Carquinez from Port Costa to Benicia was included in the length of the Northern railway, as assessed, the attorneys for plaintiff may file in the case the sworn statement of the clerk of the State board of equalization, which statement, if filed, shall be conclusive upon that issue.

And it is further stipulated that at any time before the
62 decision of this case the attorneys for plaintiff may file in the case the sworn statement of the clerk of the State board of equalization upon the issue whether or not the value of fences were included by the board in the assessment of the property described in the complaint, and that, if filed, said statement shall be conclusive upon that issue.

Dated Oct. 2d, 1884.

J. E. FOULDS,
H. S. BROWN, &
CREED HAYMOND,
Att'ys for Def't.
E. C. MARSHALL,
Att'y Gen'l and Att'y for Plaintiff.

W. T. BAGGETT,
JAMES A. WAYMIRE,
Counsel for Plaintiff.

Endorsed: Filed October 2, 1884. L. S. B. Sawyer, clerk.

63 *Findings.*

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY COMPANY, a Corporation, Defendant. } No. 3265.

The above-entitled cause having been brought on to a hearing before the court without a jury, and the parties by stipulation in writing, filed with the clerk, having waived a jury, and the proofs introduced and given by the respective parties having been fully considered, the court makes the following finding of facts:

1.

That on the 18th day of August, 1883, the State board of
64 equalization of the State of California, acting under the authority of section ten of article XIII of the constitution of the State of California, and in the mode and manner prescribed by section 3665 of the Political Code of California, assessed the franchises, roadway, road-bed, rails, and rolling-stock of the defendant at the sum of two million dollars; that the board apportioned the said assessment as alleged in plaintiff's complaint; that thereafter and in the manner and at the times prescribed by section 3666 of

the Political Code, the State board of equalization prepared for that year a book called "The Record of Assessments of Railways," on which book the assessment above referred to was entered and signed by the chairman and clerk; that thereafter, and in the time and manner prescribed by said section, the "record of apportionment" of said assessment was made by the board to the counties and cities
65 and counties in a separate book, called "Record of Apportionment of Railway Assessments;" that before the third Monday in October of said year the clerk of the State board of equalization prepared and transmitted to the comptroller of the State duplicates of The Record of Assessments of Railways, each certified by the chairman and clerk of the board; that said duplicates were in manner and form as provided by said section 3666; that the entries upon said books relating to the cause of action stated in the complaint herein [are] as follows:

From The Record of Apportionment:

Name of the corporation, person, or association to whom each railway is assessed, The Northern Railway Company.

The name of each railway assessed by the State board of equalization, Northern railway.

Name of the county and city and county to which the assess-
66 ment of each railway was apportioned by the board, Alameda, Colusa, Contra Costa, Solano, Tehama, Yolo.

Number of miles of each railway operated in the State, 148.40.

Number of miles of each railway assessed by the board in each county and city and county:

Alameda	6.85 miles.
Colusa	62.81
Contra Costa	23.75
Solano	16.95
Tehama	17.29
Yolo	20.75

Total value of each railway per mile, $13,477.08.

Total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway assessed for the purpose of State taxation by the State board of equalization, $2,000,000.00.

The amount of the apportionment of the total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway to each county and city and county for county and city and county taxation:

67 Alameda	$92,318 00
Colusa	846,496 00
Contra Costa	320,081 00
Solano	228,437 00
Tehama	233,019 00
Yolo	279,649 00

Rate of taxation for each county and city and county levied by board of supervisors on each $100:

Alameda	$.503 .753
Colusa	.953
Contra Costa	1.053
Solano	1.073
Tehama	1.053
Yolo	.753

Amount of State taxes due the State upon the whole assessment by each corporation, person, or association assessed for railway. State rate of taxation on each $100 is 49.7 cents—$9,940.

Amount of county and city and county taxes due upon the assessment apportioned to each county and city and county by each corporation, person, or association assessed for railway:

68	Alameda ($51,212.90 at .503 rate. $41,105.10 at .753 rate.)	$567 12
	Colusa	8,067 10
	Contra Costa	3,370 45
	Solano	2,451 12
	Tehama	2,453 69
	Yolo	2,105 75

From the Record of Assessment of Railways.

The State board of equalization being in session on this the 18th day of August, 1883, all the members being present, and having under consideration the assessment of the franchise, roadway, road-bed, and rails of the Northern Railway Company within the State for the year 1883, and it appearing to this board that said company, on the 1st Monday in March, in the year 1883, at 12 o'clock meridian of that day, owned and still own one hundred and forty-eight $\frac{40}{100}$ miles of railroad within this State, which at said time and day in March was, and still is, operated in more than one county,
69 being the entire railway of said company within this State, and which, with the right of way for the same, is described as follows:

Alameda. Line of roadway, road-bed, and rails, and right of way for the same, beginning at the point of intersection of Bay street, Oakland, with the mole, running thence northerly, skirting the shore line, and through portions of blocks 41, 42, 43, 48, 50, 51 of West Oakland; thence through blocks 744, 751, 745, 758, 765, in Houghan tract; thence through Maxwell tract and Filler homestead, in the same general direction, to Shell Mound; thence along and on Third street northerly to Cos Honeces creek; thence in a direct line to centre of Cerito creek to a point on south line of Contra Costa county, the right of way, except through public thoroughfares, being an average of seventy feet, running a distance of six and 85-100 miles in Alameda county.

70 Contra Costa. Also beginning at a point in centre of Cerito creek, on the south line of and in the southwest corner of Contra Costa, running thence northerly through San Pablo and Pinole [and] Torriez, to a point on the south line of San Pablo bay; thence northeasterly with general course of south line of said bay through Vallejo Junction to Port Costa; thence still skirting south line of said bay easterly to depot in Martinez; width of right of way, one hundred feet, running a distance of twenty-three and $\frac{75}{100}$ miles in Contra Costa county.

Solano. Also beginning at end of wharf in Benicia, running thence northeasterly, skirting the Straits of Casquinez on the north side to Army Point; thence rounding Army Point and running in a general northerly direction through Goodyear's Station to town of Suisin, and connection with California Pacific railroad, with
71 width of right of way one hundred feet, running a distance of sixteen and 95-100 miles in Solano county.

Yolo. Also beginning at Woodland and running thence northwesterly through townships 10, 11, 12 north, range 1 east and 1 west, to a point on south line of Colusa county, near the south line of southwest quarter of section 32, township 13 north, range 2 west, right of way one hundred feet wide, running a distance of twenty and $\frac{75}{100}$ miles in Yolo county.

Colusa. Also beginning at a point on the north line of Yolo county on the south line of southwest quarter of section 32, township 13 north, range 2 west, running thence northwesterly through the town of Williams and Arbuckle to northwest corner of section 34, township 16 north, range 3 west; thence north through center of townships 16, 17, 18, 19, 20, 21, 22 north, range 3
72 west, and through the towns of Willows and Norland to a point on the south line of Tehama county on north line of section 2, township 22 north, range 3 west, right of way one hundred feet wide, running a distance of sixty and $\frac{81}{100}$ miles in Colusa county.

Tehama. Also beginning at a point on north line of Colusa county on the north line of section 2, township 22 north, range 3 west, running thence north through townships 23, 24, 25 north, range 3 west, and through the town of Corning to depot at Tehama and the intersection of the California-Oregon branch of the Central Pacific railroad, right of way one hundred feet wide, thus running a distance of seventeen and $\frac{29}{100}$ miles in Tehama county.

And it appearing that the actual value of the franchise,
73 roadway, road-bed, and rails of said company within this State at the said date and time in March was and still is the sum of two million dollars:

Therefore it is hereby ordered that the said franchise, roadway, road-bed, and rails for the year 1883 be, and the same are hereby, assessed to the Northern Railway Company at the sum of two million dollars.

C. E. WILCOXON, *Chairman.*
E. W. MASLIN, *Clerk.*

II.

That the defendant is, and for more than five years last past has been, a corporation existing under the laws of the State of California, and as such it constructed the line of railroad known as the Northern railway, and more particularly described in subdivision 2 of defendant's answer herein; that the principal place of business of
74 defendant now is, and for many years past has been, the city of San Francisco, State of California; that some of its stockholders and members now are, and ever have been, citizens of the United States, resident in the State of California, and some of its stockholders and members now are, and ever have been, citizens of the United States and residents in States other than the State of California.

III.

That the total length of said railroad in said State of California is 148.40 miles, and the length thereof in the respective counties through which it passes is as follows:

Alameda	6.85
Contra Costa	23.75
Solano	16.95
Yolo	20.75
Colusa	62.81
Tehama	17.29

IV.

That on the 1st day of April, 1875, the defendant was indebted to divers persons, citizens of the United States, and many of them
75 then and now citizens and *bona fide* residents of the State of California, in large sums of money advanced to construct and equip the railroad hereinbefore described; that to secure the payment of such indebtedness the defendant, on the 1st day of April, 1875, executed and delivered a mortgage upon said railroad, its franchises, and all rolling-stock and appurtenances; that said indebtedness exceeded and still exceeds three thousand dollars per mile of said road, and that no part thereof has ever been paid except the accruing interest, and that the whole thereof is now, and since the execution of said mortgage has been, a valid and subsisting indebtedness against said company, and has been, and still is, secured by said mortgage.

V.

That on the 18th day of August, 1883, the State board of equalization of the State of California, pretending to act under and
76 by virtue of the powers conferred upon it by sec. ten of article XIII of the constitution of the State of California, did make a pretended assessment for the purposes of taxation for the fiscal year of said State then next ensuing upon the franchise, roadway, road-bed, rails, and rolling-stock of said railroad against defendant.

Said pretended assessment was not made separately upon the franchise, roadway, road-bed, rails, and rolling-stock, or any properties of said railroad, but all of said property was blended in making said assessment, which assessment was then and there so entered upon the minutes of said board. Said assessment is the assessment upon which the several taxes mentioned in the complaint herein are based; and no other assessment than the aforesaid was ever made of said property or any property thereof for said fiscal year. Said
77 assessment included all property and kinds of property mentioned in section 3665 of the Political Code of California as amended March 9, 1883, except *to* depots, stations, shops, and buildings erected upon the space covered by the right of way, which last-mentioned property was assessed as provided in said section by local assessors.

VI.

That the State board of equalization, in making the said pretended assessment, pretended to assess to and against defendant the full cash value of said railroad, roadway, road-bed, rails, rolling-stock, and franchises as prescribed in said section 3665, without deducting therefrom the value of the mortgage, or any part thereof, given and existing thereon as aforesaid to secure the indebtedness of said company to the holders of said bonds, notwithstanding, as defendant avers, they had full knowledge of the existence of such mortgage.

78 VII.

That in making said pretended assessment the State board of equalization did not deem or treat said mortgages as an interest in said property, but did assess the whole value of said property to the defendant in the same manner it would have done had there been no mortgages thereon.

VIII.

That under section four of article XIII of the constitution of California property of natural persons or corporations not quasi-public, having a mortgage, lien, or encumbrance thereon, is not assessed in full to the owner thereof, but the owner is only assessed for the value of the owner's interest in such property over and above the value of the mortgage, lien, or encumbrance. In the case of the property of railroad and other quasi-public corporations no such allowance or deduction is made, had, or allowed with respect to any
79 mortgage, lien, or encumbrance; that the tenth section of article XIII of the constitution of the State of California provides the same mode for the assessment of the franchises, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, whether such property be owned by railroad or other quasi-public corporations, or by private corporations, or by natural persons.

IX.

That at and before and ever since the adoption of the constitution

of the State of California now in force there were and are existing under the laws of said State corporations of various kinds, formed for the purpose of and actually operating and doing business, holding and using and operating property in more than one county in said said State, and that at all of said times there were and now are
80 divers natural persons, residents of said State, operating property in more than one county in said State, and that at all of said times there were and now are railroads owned by corporations formed under the general laws of the State, also by natural persons, which are only operated in one county; that corporations in said State of California now are and ever have been formed under general laws relating thereto, and railroad and all other corporations, except public corporations formed or organized for the government of a portion of the State, now are and ever have been designated by the laws of California as private corporations; that under the provisions of said laws such corporations may be formed for any purpose for which individuals or natural persons may lawfully associate themselves together; that there now exists in California and ever have existed corporations formed under said laws for fire, marine, mutual
81 life, health, and accident insurance, building, constructing, and operating railroads, wagon-roads, telegraphs, bridges, ferries, wharves, chutes, and piers, and for constructing and operating canals; for the purposes of acquiring lands in large tracts and distributing them as homesteads among the incorporators; for savings and loans; for mining; for the sale and distribution of water in cities and towns for manufacturing, mechanical, and agricultural purposes; for benevolent, charitable, and educational purposes; for cemeteries, agricultural fairs, and various other purposes.

That in said State there now are, and for more than three years last past have been, various railroads owned, operated, and controlled either by individuals, partnerships, or by private corporations other than railroad corporations, to wit, by mining and manufacturing corporations.

82 That there now is, and for more than three years last past has been, a railroad in use and operation extending from the city of Marysville, in the county of Yuba, to the town of Oroville, in the county of Butte, in said State, a distance of twenty-seven miles, which said road now is, and ever has been, operated in more than one county in this State, and is of the same gauge as the road of defendant, and has ever been operated for like uses and purposes; that said road, with all its equipments, now is, and for more than three years last past has been, in the ownership and under the operation and control of one N. D. Rideout, a citizen of the United States and a resident of the State of California; that there now is, and for more than three years last past has been, a railroad extending from the town of Santa Cruz, on the Pacific Ocean, and into the county of Monterey towards the town of Pajara, a distance of
83 about twenty-one miles; that said road now is, and for a long time past has been, owned, operated, and used for like purposes for which the defendant's road is owned, operated, and used, and that the same now is, and for a long time past has been, in the owner-

ship and operated by the Pacific Improvement Company, a private corporation formed under the laws of the State of California, which said corporation is not, and never has been, a railroad or quasi-public corporation; that there are now, and for more than five years last past have been, divers other railroads owned and operated in said State by corporations other than railroad corporations, and by individuals and partnerships, and that all said corporations, individuals, and partnerships are the owners of lands which are assessed by the local assessors of the various counties in
84 which such lands are situated, and all are entitled under the laws of said State to the deductions provided for in said laws, and have been allowed such deductions.

X.

That in making said pretended assessment the State board of equalization included the full value of all franchises and corporate powers held and exercised by the defendants.

XI.

That said pretended assessment is the only assessment of said property, and the pretended tax for the non-payment of which this action is brought is founded upon said pretended assessment and upon no other.

XII.

That on the 9th day of November, 1883, the defendant, while then and at all times denying all liability upon said pretended assessment, and claiming that all the proceedings had in relation thereto were in violation of law and the rights of defendant, ten-
85 dered and offered to the said plaintiff the sum of $17,373.13 in United States gold coin in part payment of the tax claimed in the complaint, with an agreement that the receipt of said sum should not prejudice the plaintiff in any legal rights; that the defendant afterwards brought said sum into court and offered the same to plaintiff and subjected the same to such orders or judgments as the court might make in the premises; that of the sum so tendered it tendered specifically for the benefit of the State and on the amount claimed by the State the sum of $5,964, and on account of the various county taxes claimed it tendered sums as follows, to wit:

For the county of	Alameda the sum of	$340 27
Do.	Colusa	4,840 26
Do.	Contra Costa	2,022 27
Do.	Solano	1,470 67
Do.	Tehama	1,472 21
Do.	Yolo	1,263 45

86 That defendant ever since said tender was made kept the same good; that afterwards, to wit, on the 29th day of September, 1884, in this court, and upon motion of attorneys for plaintiff, an order was made that the defendant, within five days from said date, make

said tender good by paying to Edward C. Marshall, attorney general of the State of California, and one of the attorneys for plaintiff herein, the said sum of $17,373.13 in United States gold coin, to be by the said Marshall, upon the receipt thereof, paid into the State treasury of the State of California for the benefit of the State of California and of the counties named in the respective amounts above specified, and it was then and there further ordered by said court, by consent of the parties to the action, that neither the payment nor the receipt of said sum should prejudice or affect any right of either party to this action to maintain or defend it as to the balance claimed in the complaint; that
87 afterwards, to wit, on the 2d day of October, 1884, in obedience to the said order the defendant made said tender good by paying to the said Marshal the said sum of $17,373.13 for the uses and purposes and upon the terms and conditions mentioned in the said order.

XIII.

That the board of equalization never at any time made or adopted any rule or regulation relative to the assessment or valuation of railroad property of any kind; that said board never made or adopted any rule to govern or regulate its proceedings in the exercise of the powers conferred upon it by section ten of article XIII of the constitution of California.

Conclusions of Law.

From the foregoing facts the court finds as a conclusion of law that the defendant is entitled to judgment in its favor, with costs;
88 and it is so ordered.

LORENZO SAWYER,
U. S. Circuit Judge.

Endorsed: Filed Nov. 10, 1884. L. S. B. Sawyer, clerk.

89 *Judgment.*

Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
NORTHERN RAILWAY COMPANY, a Corporation, Defendant. } No. 3265.

This action came on regularly for trial by the court, a jury trial hereof having been waived by written stipulation of the parties hereto, and the evidence of the respective parties being adduced and the arguments of counsel had thereon, the cause was submitted to the court for consideration and decision, and the court, after due deliberation, having filed its findings in writing and ordered that
90 judgment be entered herein for the defendant in accordance therewith, now, therefore, by virtue of the law and the findings

aforesaid, it is considered by the court that the plaintiff take nothing by this action; that the defendant go hereof without day, and that said defendant recover from said plaintiff its costs in this behalf expended, taxed at $—.

Entered this 10th day of November, 1884.

L. S. B. SAWYER, *Clerk.*

A true copy.
Attest, &c.:
[SEAL.] L. S. B. SAWYER, *Clerk.*

Endorsed: Filed Nov. 10, 1884, L. S. B. Sawyer, clerk.

91 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Circuit, District of California.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
NORTHERN RAILWAY COMPANY.

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit within and for the district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the therein-entitled action.

Witness my hand and the seal of said circuit court this 10th day of November, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk,*
By F. D. MONCTON, *Deputy Clerk.*

92 Endorsed: Judgment-roll. Filed November 10, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

93 *Authorization that Jas. A. Waymire & Wm. T. Baggett Continue as Attorneys for Plaintiff.*

In the Circuit Court of the United States in and for the Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY.

To James A. Waymire, Esq., and Wm. T. Baggett, Esq.

GENTLEMEN: You are hereby requested, authorized, and empowered to continue as attorneys of record for the plaintiff in the above-entitled cause, and, subject to my instructions, to exercise entire control of said cause.

San Francisco, April 28th, 1884.

E. C. MARSHALL,
Attorney General.

Endorsed: Filed April 28th, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

94 *Appointment of D. M. Delmas as Attorney for Plaintiff.*

In the Circuit Court of the United States, Ninth Circuit, District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
vs.
THE NORTHERN RAILWAY CO., Defendant.

I hereby appoint D. M. Delmas, Esq., attorney for the plaintiff in the above-entitled action in place of Messrs. James A. Waymire and W. T. Baggett.

JOHN P. DUNN,
State Controller.

Endorsed: Filed April 28, 1884. L. S. B. Sawyer, clerk.

95 At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit in and for the district of California, held at the court-room in the city and county of San Francisco on Monday, the 26th day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Honorable Lorenzo Sawyer, circuit judge.

Order that Hon. E. C. Marshall be Entered of Record as Att'y for Plaintiff, and D. M. Delmas, Esq., Substituted as Attorney for the Comptroller, &c.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 3265.

A motion to substitute D. M. Delmas, Esq., for James A. Waymire and W. T. Baggett, Esq., as attorney for plaintiff, and a counter-motion of Hon. E. C. Marshall, attorney general, to retain
96 Messrs. Waymire and Baggett as his representatives, with power as attorneys of record to control said action heretofore argued and submitted, having been duly considered, it is now here ordered that Hon. E. C. Marshall, attorney general of the State of California, be, and he is hereby, directed to be entered as attorney for the plaintiff in the above-entitled action, with power to control the proceedings therein in all matters of difference between him and the other attorneys in the case; and it is further ordered that D. M. Delmas, Esq., be, and he is hereby, substituted as attorney for the comptroller instead of James A. Waymire and W. T. Baggett, Esqs., subject to the control of the action and proceedings therein by the said attorney general, as hereinbefore provided.

97 *Bond on Writ of Error.*

In the Supreme Court of the United States.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff in Error,

vs.

THE NORTHERN RAILWAY COMPANY, a Corporation, Defendant in Error.

Know all men by these presents that we, Louis Marshall and H. A. Greene, are held and firmly bound unto The Northern Railway Company, defendant in error herein, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said The Northern Railway Company, its successors or assigns; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

98 Sealed with our seals. Dated the 28th day of July, 1886.

Whereas the above-named The People of the State of California have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered and entered by the circuit court of the United States of America for the district of California in the cause entitled The People of the State of California *vs.* The Northern Railway Company, No. 3265:

Now, therefore, the condition of this obligation is such that if the above-named The People of the State of California shall prosecute their said writ of error to effect and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

LOUIS MARSHALL. [SEAL.]
H. A. GREENE. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. D. MONCKTON.

UNITED STATES OF AMERICA, }
District of California, } *ss:*

99 Louis Marshall and H. A. Greene, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of five hundred dollars in lawful money of the United States of America, exclusive of property exempt from execution and over and above all debts and liabilities.

LOUIS MARSHALL.
H. A. GREENE.

Subscribed and sworn to before me this 28th day of July, 1886.

F. D. MONCKTON,
Commissioner of U. S. Circuit Court, District of California.

Endorsed: The form of the within bond and the sufficiency of the sureties therein are hereby approved. (Signed) Lorenzo Sawyer, circuit judge. Filed July 28, 1886. L. S. B. Sawyer, clerk.

100 In the Circuit Court of the United States for the Northern District of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE NORTHERN RAILWAY COMPANY. } No. 3265.

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit in and for the northern district of California, do hereby certify that the foregoing ninety-nine written pages, numbered from 1 to 99, inclusive, are a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 2d day of September, A. D. 1886.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER, *Clerk.*

101 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit in and for the district of California, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between The People of the State of California, plaintiff in error, and The Northern Railway Company, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that, the record and proceedings aforesaid be[ing] inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28 day of July, in the year of our

Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh.

[The Seal of the Circuit Court, District of Cal'a.]

L. S. B. SAWYER,
Clerk of the Circuit Court of the United States for the District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge, Ninth Judicial Circuit.

102 [Endorsed:] No. 3265. United States Supreme Court. The People of the State of California, pl'ffs in error, *vs.* The Northern Railway Company, defendant in error. Writ of error. Service of a copy of within admitted this 3d day of Aug., 1886. H. S. Brown, att'ys for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.

The Answer of the Judges of the Circuit Court of the United States for the District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

[The Seal of the Circuit Court, District of Cal'a.]

By the court:

L. S. B. SAWYER, *Clerk.*

103 UNITED STATES OF AMERICA, *ss*:

To the Northern Railway Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the 11th day of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit in and for the district of California, wherein The People of the State of California are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 28th day of July, A. D. 1886, and of the Independence of the United States the one hundred and eleventh.

LORENZO SAWYER,
U. S. Circuit Judge for the District of California.

104 [Endorsed:] No. 3265. In the Supreme Court of the United States. The People of the State of California, pl'ffs in error, *vs.* The Northern Railway Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged this 23d day of Aug., 1886. H. S. Brown, att'y for def't in error. Filed September 2d, 1886. L. S. B. Sawyer, clerk.

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sept. 28, 1886. Clerk's office. California C. C. U. S. No. 1037. The People of the State of California, plaintiffs in error, *vs.* The Northern Railway Company. Filed September 28, 1886.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1887.—No. 362.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff in Error,

vs.

THE NORTHERN RAILWAY COMPANY,

Defendant in Error.

Brief on Behalf of Defendant in Error.

HARVEY S. BROWN,

Counsel for Defendant in Error.

San Francisco:
BACON & COMPANY, BOOK AND JOB PRINTERS,
[illegible] and Sansome Streets.

104 [Endorsed:] No. 3265. In the Supreme Court of the United States. The People of the State of California, pl'ffs in error, *vs.* The Northern Railway Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged this 23d day of Aug., 1886. H. S. Brown, att'y for def't in error. Filed September 24, 1886. L. S. B. Sawyer, clerk.

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sept. 28, 1886. Clerk's office. California C. C. U. S. No. 1037. The People of the State of California, plaintiffs in error, *vs.* The Northern Railway Company. Filed September 28, 1886.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1887.—No. 662

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff in Error,

VS.

THE NORTHERN RAILWAY COMPANY,

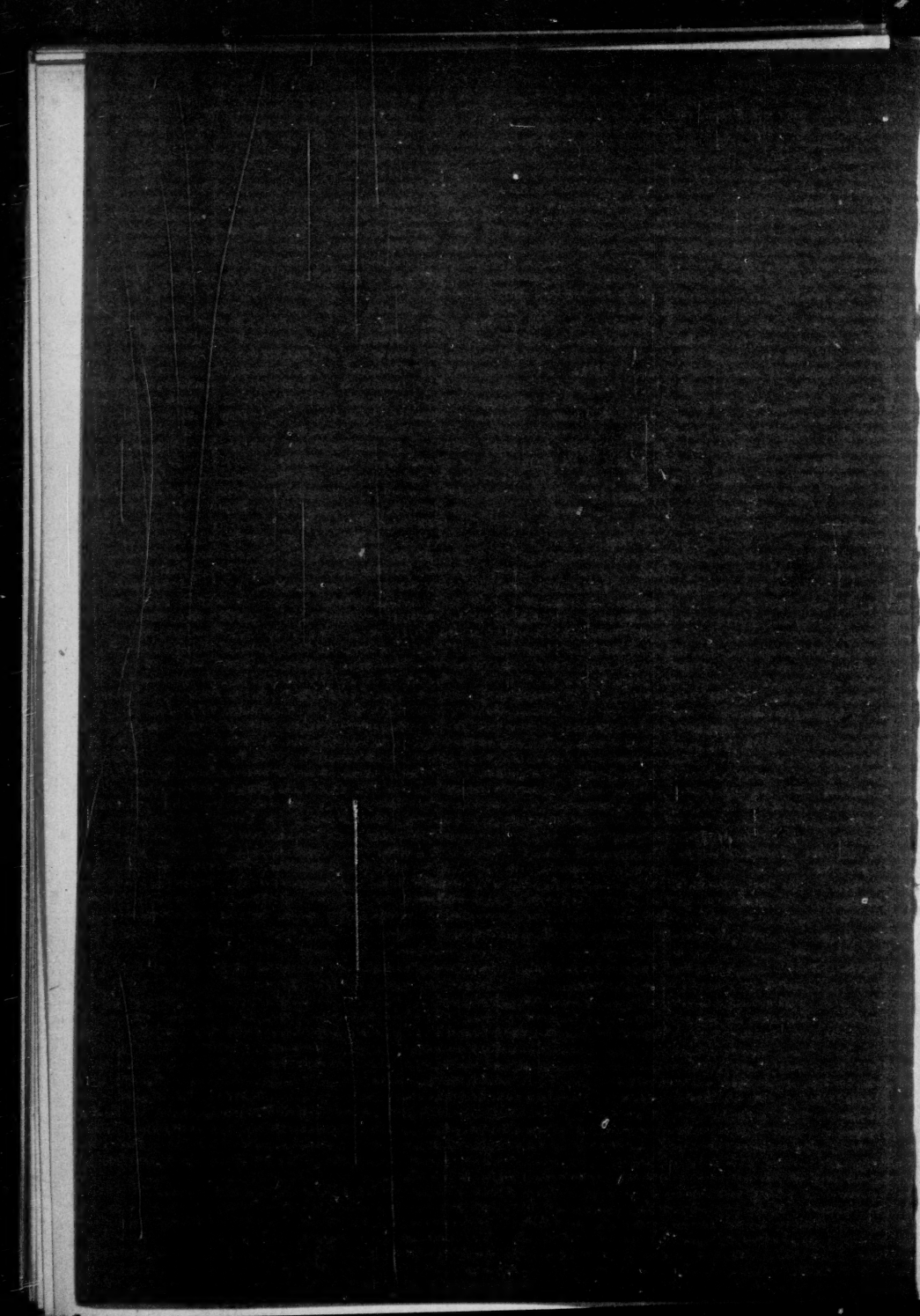
Defendant in Error.

Brief on Behalf of Defendant in Error.

HARVEY S. BROWN,

Counsel for Defendant in Error.

SAN FRANCISCO:
BACON & COMPANY, BOOK AND JOB PRINTERS,
Corner Clay and Sansome Streets.



IN THE SUPREME COURT

OF THE

UNITED STATES.

October Term, 1887.—No. 662.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff in Error,

vs.

THE NORTHERN RAILWAY COMPANY,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Statement of Case.

This action was commenced on the 23d day of February 1884, in the Superior Court of the City and County of San Francisco, by the People of the State of California against the Northern Railway Company, to recover certain State and County taxes assessed by the State Board of Equalization on the 18th of August, 1883, against the defendant in error.

The case was removed to the Circuit Court of

the United States for the District of California. There judgment was rendered in favor of the defendant.

The case in this Court stands upon the pleadings and findings, and all of the questions involved are thereon raised.

The answer consists of specific denials of all the matters which go to the validity of the assessment and tax, and those denials would, under the practice in California, have been sufficient to raise every issue passed upon in the findings. (Record, Folios 10, 11 and 12.) By separate answer substantially the same issues were raised. (Record, Folios 13 to 40.) Tender of $17,373.13 was pleaded. (Record, Folios 40 and 41.) This tender was accepted and the money paid. (Record, Folios 85 to 87.)

Points.

THE ASSESSMENT IS VOID, BECAUSE IT INCLUDES PROPERTY WHICH, UNDER THE CONSTITUTION, THE STATE BOARD OF EQUALIZATION HAD NO RIGHT TO ASSESS.

Section 10 of Article XIII of the Constitution of the State of California reads as follows:

SECTION 10. "All property, except as herein-"after in this section provided, shall be assessed

"in the county, city, city and county, town, town-
"ship or district in which it is situated, in the
"manner prescribed by law. The franchise, road-
"way, road-bed, rails and rolling stock of all rail-
"roads operated in more than one county in this
"State shall be assessed by the State Board of
"Equalization at their actual value, and the same
"shall be apportioned to the counties, cities and
"counties, cities, towns, townships, and districts
"in which such railroads are located, in propor-
"tion to the number of miles of railway laid in such
"counties, cities and counties, cities, towns, town-
"ships and districts."

Section 3665 of the Political Code of California, as amended March 9th, 1883, so far as the same is material to the question, is as follows:

"3665. The State Board of Equalization must
"meet at the State Capitol on the first Monday
"in August, and continue in open session from
"day to day, Sundays excepted, until the third
"Monday in August. At such meeting the
"Board must assess the franchise, roadway, road-
"bed, rails and rolling stock of all railroads oper-
"ated in more than one county. Assessment
"must be made to the corporation, person or asso-
"ciation of persons owning the same, and must be
"made upon the entire railway within the State,
"and must include the right of way, bridges, cul-
"verts, wharves and moles upon which the track
"is laid, and all steamers which are engaged in
"transporting passengers, freights, and passenger

"and freight cars across waters which divide the "road. The depots, stations, shops and buildings "erected upon the space covered by the right of "way are assessed by the Assessor of the County "wherein they are situate * * *."

The fifteenth finding of fact (Transcript, folios 76 and 77) reads as follows:

"V.

"That on the 18th day of August, 1883, the "State Board of Equalization of the State of Cali- "fornia, pretending to act under and by virtue of "the powers conferred upon it by Sec. 10 of Arti- "cle XIII of the Constiution of the State of Cal- "ifornia, did make a pretended assessment for the "purposes of taxation for the fiscal year of said "State then next ensuing, upon the franchise, "roadway, roadbed, rails and rolling stock of said "railroad against defendant. Said pretended as- "sessment was not made separately upon the fran- "chise, roadway, roadbed, rails and rolling stock, "or any properties of said railroad, but all of "said property was blended in making said "assessment, which assessment was then and "there so entered upon the minutes of said Board. "Said assessment is the assessment upon which "the several taxes mentioned in the complaint "herein are based; and no other assessment than "the aforesaid was ever made of said property or "any part thereof, for said fiscal year. Said assess- "ment included all property and kinds of property

"mentioned in Section 3665 of the Political Code
"of California, as amended March 9, 1883, except to
"depots, stations, shops and buildings erected up-
"on the space covered by the right of way, which
"last mentioned property was assessed, as provid-
"ed in said section, by local assessors."

Reading this finding in connection with section 3665 of the Political Code, it appears that the State Board of Equalization, in making the assessment in question, followed the provisions of that section, and included within the assessment not only the property which it was authorized to include by the State Constitution, but property which the State Constitution provides shall be assessed by the local assessors; to wit, wharves and moles upon which tracks are laid, and steamers engaged in transporting freights and passengers.

Section 3665 is clearly unconstitutional, and the assessment made in accordance with it must fall. This is no longer an open question; the principle involved having been determined by both this Court and the highest Court of the State of California.

Santa Clara Co. vs. *Southern Pacific R. R. Co.*, 118 U. S., p. 394; *City and County of San Francisco* vs. *Central Pacific R. R. Co.*, 63 Cal. 467.

II.

THE STATUTES UNDER WHICH THE PROCEEDINGS IN THIS CASE WERE INSTITUTED IN THE COURT BELOW, AS WELL AS THE STATUTE IN FORCE WHICH PRESCRIBES THE MODE AND MANNER OF COLLECTING TAXES ASSESSED BY THE STATE BOARD OF EQUALIZATION, VIOLATE THE PROVISIONS OF THE STATE CONSTITUTION, AND ARE VOID.

The laws in question are found in sections 3666, 3667, 3668, 3669 and 3670 of the Political Code, as amended March 9th, 1883. They are as follows:

SEC. 3666. "The State Board of Equalization "must prepare each year a book to be called 'Rec- "ord of Assessment of Railways,' in which must "be entered each assessment made by the Board, "either in writing, or by both writing and print- "ing. Each assessment so entered must be signed "by the Chairman and Clerk. The record of the "apportionment of the assessments made by the "Board to the counties, and cities and counties, "must be made in a separate book, to be called "'Record of Apportionment of Railway Assess- "ments.' In such last described book must be "entered the names of the railways assessed by the "Board, the names of the corporation to which "or the name of the person or association to "whom each railway was assessed, the whole num- "ber of miles of the railway in the State, the num-

"ber of miles thereof in each county, or city and "county, the total assessment of the franchise, "roadway, roadbed, rails and rolling stock for pur- "poses of State taxation, the amount of the ap- "portionment of such total assessment to each "county, and city and county, for county and city "and county taxation. Before the third Monday "of October of each year the Clerk of the State "Board of Equalization must prepare and trans- "mit to the Controller of State duplicates of the "'Record of Assessment of Railways,' and 'Rec- "ord of Apportionment of Railway Assessments,' "each certified by the chairman and clerk of the "Board, and to be known respectively as 'Dupli- "cate Record of Assessment of Railways,' and "'Duplicate Record of Apportionment of Railway "Assessments.' In the last named duplicate two "columns must be added, in one of which the "Controller must enter the State taxes due the "State, upon the whole assessment, by each cor- "poration, person or association; and in the other "the county or city and county taxes due upon "the assessment apportioned to each county or "city and county by each corporation, person or "association. The two duplicates constitute the "warrant for the Controller to collect the state and "county and city and county taxes levied upon "such property assessed by the Board, and the "amount of the apportionment of the assessment "to each county, and city and county, respective- ly." (New section, approved March 9, 1883; Statutes and Amendments 1883, p. 65; went into effect immediately.)

SEC. 3667. "When the Board of Supervisors "of each county, and city and county, to which "the State Board of Equalization has apportioned "the assessment of railways, shall have fixed the "rate of county, or city and county taxation, the "clerk of the Board of Supervisors must forth- "with, by mail, postage paid, transmit to the Con- "troller a statement of the rate of taxation levied "by the Board of Supervisors for county, or city "and county taxation. If the clerk fails to trans- "mit such statement, the Controller must obtain "the information as to such rate of taxation from "other sources. On or before the fourth Monday "of October, the Controller must compute and en- "ter in separate money columns in the 'duplicate "record of apportionments of railway assessments' "the respective sums, in dollars and cents, reject- "ing fractions of a cent, to be paid by the corpo- "ration, person, or association liable therefor, as "the State tax upon the total amount of the assess- "ment, and the county, or city and county tax upon "the apportionment of the assessment to each "county, and city and county, of the property as- "sessed to such corporation, person, or associa- "tion named in said duplicate record." (New section, approved March 9t 1883; Statutes and Amendments, 1883, p. 65; went into effect immediately.)

SEC. 3668. "Within ten days after the fourth "Monday in October, the Controller must publish "a notice for two weeks, in one daily newspaper "of general circulation at the State Capital, and

"in two daily newspapers of general circulation "published in the city of San Francisco, specify- "ing:

"1. That he has received from the State Board "of Equalization the 'duplicate record of assess- "ments of railways,' and the 'duplicate record of "apportionment of railway assessments';

"2. That the taxes are now payable, and will "be delinquent on the last Monday in December "next, at 6 o'clock P. M., and that unless paid to the "State Treasurer at the Capitol prior thereto, five "per cent. will be added to the amount thereof. "On the last Monday in December of each year, "at 6 o'clock P. M., all of unpaid taxes are delin- "quent, and thereafter there must be collected by "the State Treasurer, or other proper officer, an "addition of five per centum, which sum, when col- "lected, must be set aside by the Treasurer as a "fund with which to pay the contingent expenses "of actions against any delinquents, the said ex- "penses to be audited by the Board of Examin- "ers. When any taxes are paid to the State Treas- "urer by order of the Controller, upon assess- "ments made and apportioned by the State Board "of Equalization, the Controller must forthwith "notify the Auditor and Treasurer, respectively, "of each county, and city and county, that such "taxes have been paid, and of the amount thereof "to which each county, and city and county, in- "terested, is entitled. The State's portion of the "taxes must be distributed by the Treasurer to "each fund entitled thereto, and the portion be "longing to the counties, and cities and counties,

"must be placed in a fund to be called 'Rail-
"way Tax Fund,' to the credit of each county, and
"city and county entitled thereto. When any
"taxes are placed in the 'Railway Tax Fund' to
"the credit of a county, or city and county, the
"Controller, at the next settlement with the Con-
"troller by the Treasurer of such county, or city
"and county, must draw and deliver to such Treas-
"urer his warrant upon the State Treasurer for
"the amount in the fund to the credit of such
"county or city and county."

SEC. 3669. "Each corporation, person, or as-
"sociation assessed by the State Board of Equaliz-
"ation must pay to the State Treasurer, upon the
"order of the Controller, as other monies are re-
"quired to be paid into the Treasury, the state
"and county, and city and county taxes, each
"year levied upon the property so assessed to it
"or him by said board. Any corporation, person,
"or association dissatisfied with the assessment
"made by the board upon the payment of the tax-
"es due upon the assessment complained of, and
"the five per cent. added, if to be added, on or
"before the first Monday in February, and the fil-
"ing of notice with the Controller of an intention
"to begin an action, may, not later than the first
"Monday of February, bring an action against
"the State Treasurer, for the recovery of the
"amount of taxes and percentage so paid to the
"Treasurer, or any part thereof; and in the com-
"plaint may allege any fact tending to show the
"illegality of the tax, or of the assessment upon

"which the taxes are levied, in whole or in part. "A copy of the complaint and of the summons "must be served upon the Treasurer within ten "days after the complaint has been filed, and the "Treasurer has thirty days within which to demur "or answer. At the time the Treasurer demurs "or answers he may demand that the action be "tried in the Superior Court of the County of "Sacramento. The Attorney General must defend "the action. The provisions of the code of civil "procedure, relating to pleadings, proofs, trials "and appeals are applicable to the proceedings "herein provided for. If the final judgment be "against the Treasurer, upon presentation of a "certified copy of such judgment to the Control-"ler, he shall draw his warrant upon the State "Treasurer, who must pay to the plaintiff the "amount of the taxes so declared to have been il-"legally collected, and the cost of such action, "audited by the Board of Examiners, must be paid "out of any money in the general fund of the "Treasury, which is hereby appropriated; and the "Controller may demand and receive from the "county, or city and county interested the pro-"portion of such costs, or may deduct such pro-"portion from any money then or to become due "to said county, or city and county. Such ac-"tion must be begun on or before the first Mon-"day in February of the year succeeding the year "in which the taxes were levied, and a failure to "begin such action is deemed a waiver of the "rights of action."

SEC. 3670. "After the first Monday of February of each year, the Controller must begin an action in the proper court, in the name of the People of the State of California, to collect the delinquent taxes upon the property assessed by the State Board of Equalization. Such suit must be for the taxes due the State, and all the counties and cities and counties, upon property assessed by the Board of Equalization, and appearing delinquent upon the 'duplicate record of apportionment of railway assessments.' The demands for state and county, and city and county taxes may be united in one action. In such action a complaint in the following form is sufficient:

[Title of Court.]

"The People of the State of California,
vs.
(Naming the Defendant).

"Plaintiff avers that on the day of , in the year (naming the year), the State Board of Equalization assessed the franchise, roadway, roadbed, rails, and rolling stock of the defendant, at the sum of (naming it) dollars: That the Board apportioned the said assesment as follows: To the county of (naming it) the sum of (naming it) dollars, and so on (naming each county).

"That the defendant is indebted to plaintiff for state and county taxes for the year 18—, in the following sums: For state taxes, in the sum of (naming it) dollars; for county taxes of the

"county of (naming it), in the sum of (naming it) "dollars, etc., with five per cent. added for non- "payment of taxes. Plaintiff demands payment "for said several sums, and prays that an attach- "ment may issue in form as prescribed in Sec- "tion 540 of the Code of Civil Procedure.—(Signed by the Controller or his Attorney.)

"On the filing of such complaint the clerk "must issue the writ of attachment prayed for, "and such proceedings shall be had as under "writs of attachment issued in civil actions. No "bond nor affidavit previous to the issuing of the "attachment is required. If in such action the "plaintiff recover judgment, there shall be in- "cluded in the judgment as counsel fees—and in "case of judgment of taxes, after suit brought but "before judgment, the defendant must pay as "counsel fees--such sum as the court may deter- "mine to be reasonable and just. Payment of "the taxes or the amount of the judgment in the "case must be made to the State Treasurer. In "such actions the duplicate record of assessments "of railways and the duplicate record of appor- "tionment of railway assessments, or a copy of "them, certified by the Controller, showing unpaid "taxes against any corporation, person, or asso- "ciation, for property assessed by the State "Board of Equalization, is prima facie evidence "of the assessment, the property assessed, the de- "linquency, the amount of the taxes due and un- "paid to the state, and counties, or cities and "counties therein named, and that the corpora- "tion, person or association is indebted to the

"people of the State of California in the amount "of taxes, state and county and city and connty "therein appearing unpaid, and that all the forms "of law in relation to the assessment and levy of "such taxes have been complied with."

(New section, approved March 9, 1883; Statutes and Amendments, 1883, 65; went into effect immediately.)

The general laws of California provide for the assessment and collection of taxes, and also regulate the practice of courts of justice. The Constitution of the State of California, Article IV, Section 25 provides:

SEC. 25. "The legislature shall not pass local "or special laws in any of the following enumerat- "ed cases, that is to say: * * *

"*Third.*—Regulating the practice of courts of "justice. * * *

"*Tenth.*—For the assessment or collection of "taxes. * * *

The People of the State of California commenced an action in a State Court, to recover the taxes claimed to be due from the railroad companies for the fiscal year ending July 1st, 1886. The companies demurred, and among other points, raised the one here stated. The demurrer was sustained, one of the ablest Judges in the State rendering an opinion, holding both upon principle and upon the authority of the decisions of the

highest Court of the State, that the laws in question were special. That they were within the inhibition of the Constitution for two reasons: first, that they regulated the practice of Courts of justice; and second, that they provided for collection of taxes; neither of which could be done by special laws.

From that judgment the People have taken an appeal to the Supreme Court of the State, where the case is now pending.

III.

These Points Decisive.

If these positions are tenable, there will be no occasion to consider the grave questions of constitutional law involved, for in that event the judgment can be affirmed, upon the ground that the assessment could not be the basis of a judgment against the defendant.

Santa Clara Co. *vs.* S. P. R. R, 118 U. S., p. 411.

The Federal Questions Involved.

There are certain Federal Questions which may be raised upon the record, and which will come to the Court for determination, if the case is not disposed of on the State questions.

They are:

1. That defendant's road is a part of a continuous postal and military route, constructed and maintained under the authority of the United States by means in part obtained from the general Government; that the Company having, with the consent of the State, become subject to the requirements, conditions and provisions of the Acts of Congress, it thereby ceased to be merely a State corporation, and become one of the agencies or instrumentalities employed by the general Government to execute its constitutional powers; and that the franchise to operate a postal and military route, for the transportation of troops, munitions of war, public stores, and the mails, being derived from the United States, cannot, without their consent, be subjected to State taxation.

2. That a tax upon defendant's franchise is a tax upon Interstate Commerce.

3. That the provisions of the Constitution and laws of California, in respect to the assessment for taxation of the property of railway corporations, operating railroads in more than one county, are in violation of the Fourteenth Amendment of the Constitution, in so far as they require the assessment of their property at its full money value, without making deduction, as in the case of railroads operated in one county, and of other corporations and of natural persons, for the value of

mortgages covering the property assessed; thus imposing upon the defendant unequal burdens, and to that extent denying to it the equal protection of the law.

4. That the provisions of the Constitution and laws of California, which provide for the assessment of the property of railroad companies operating in two or more counties, deny to such companies the equal protection of the law.

5. That the provisions of the Constitution and laws of the State of California, which provide for the assessment of the property of railroad companies operating in two or more counties, would, if enforced, deprive such companies of their property without due process of law.

These Federal Questions are presented in brief herewith filed in the case of the People of the State of California, Plaintiff in Error, against the Central Pacific Railroad Company, Defendant in Error, calendar No. 664, which case, under the order of this Court, will be argued with this. The defendant in error asks to be permitted to refer to the brief in that case and to make it part hereof.

All of which is respectfully submitted.

HARVEY S. BROWN,

Counsel for Defendant in Error.